

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARRY LEE BREED,

Defendant-Appellant.

UNPUBLISHED

July 13, 2001

No. 223536

Allegan Circuit Court

LC No. 99-011202-FC

Before: Saad, P.J., and Holbrook, Jr. and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of two counts of criminal sexual conduct in the first degree (CSC I), the victim being under the age of thirteen, MCL 750.520b(1)(a), entered after a jury trial. We affirm.

At trial complainant, defendant's former stepdaughter, testified that on two occasions defendant entered her room and engaged in penile/vaginal intercourse with her. The incidents occurred when she was twelve years old. A pediatrician who examined complainant opined that she had been sexually abused. Defendant's objection that complainant's statements to the physician were inadmissible hearsay was overruled. A social worker who interviewed complainant testified that complainant described in detail the abuse perpetrated by defendant. Defendant did not object to this testimony. The jury found defendant guilty as charged.

The decision to admit evidence is within the discretion of the trial court, and will not be disturbed on appeal absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). Reversible error may not be predicated on an evidentiary ruling unless a substantial right was affected. MRE 103(a); *People v Travis*, 443 Mich 668, 686; 505 NW2d 563 (1993). An evidentiary error does not warrant reversal in a criminal case unless, after an examination of the entire record, it appears that it is more probable than not that the error was outcome determinative. *People v Smith*, 243 Mich App 657, 680; 625 NW2d 46 (2000).

Hearsay evidence may be admitted when the statements were made for purposes of medical treatment or medical diagnosis in connection with treatment. MRE 803(4). The admissibility of hearsay evidence under this exception requires a showing of trustworthiness based on the totality of the circumstances. In *People v Meebor (After Remand)*, 439 Mich 310, 324-325; 484 NW2d 621 (1992), our Supreme Court recognized that younger complainants may

not understand the importance of telling the truth to medical professionals in the same way that adults do. The *Meebor* Court adopted a ten-factor test for determining the trustworthiness of a young declarant's statement. Those factors are: (1) the age and maturity of the declarant; (2) the manner in which the statements were elicited; (3) the manner in which the statements were phrased; (4) use of terminology unexpected of a child of similar age; (5) who initiated the examination; (6) the timing of the examination in relation to the assault; (7) the timing of the examination in relation to the trial; (8) the type of examination; (9) the relation of the declarant to the person identified; and (10) the existence or lack of motive to fabricate. In *People v Van Tassel (On Remand)*, 197 Mich App 653, 662; 496 NW2d 388 (1992), this Court held that because a person over the age of ten is presumed to be reliable, the *Meebor* factors have no application, and a rebuttable presumption arises that a person over the age of ten understands the need to be truthful with medical personnel.¹

Defendant argues that the trial court abused its discretion by admitting complainant's statements to the physician and the social worker.² We disagree and affirm defendant's convictions. Contrary to defendant's assertion, the *Meebor* test has no application in this case. *Van Tassel, supra*. The record indicates that complainant described the acts she alleged that defendant committed in order to allow the physician and the social worker to make an accurate assessment of her condition. Such statements fit within the parameters of MRE 803(4). The statements related by the physician and the social worker were consistent with complainant's direct testimony at trial. Defendant has failed to overcome the presumption that complainant's statements to the physician and the social worker were sufficiently trustworthy to merit admission under MRE 803(4). Admission of the statements did not constitute an abuse of discretion. *People v Crump*, 216 Mich App 210, 212; 549 NW2d 36 (1996).

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy

¹ 1998 PA 323, effective August 3, 1998, repealed MCL 600.2163, which required a hearing on the competency of a witness under the age of ten. MRE 601 provides that every person is competent to testify unless the court finds after questioning that the person lacks the physical or mental capacity or "sense of obligation" to testify in a truthful manner.

² At trial, defendant did not object to the admission of complainant's statement via the testimony of the social worker.